



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

July 3, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", is written over the printed name of the Chief Executive Officer.

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

MOTION TO SUPPORT H.R. 4105, THE MEDICARE RECOVERY AUDIT CONTRACTOR PROGRAM MORATORIUM ACT (ITEM NO. 9, AGENDA OF JULY 8, 2008)

Item No. 9 on the July 8, 2008 Agenda is a motion by Supervisor Knabe recommending that the Board support H.R. 4105 or similar legislation, which would impose a one-year moratorium on the Medicare Recovery Audit Contractor Program, and support amendments which would establish clear performance standards for contractors, improve oversight of contractors, and require judgments on medical necessity to be made by qualified medical professionals.

The Medicare Recovery Audit Contractor (RAC) Program was established by Congress in 2003 when it directed the Department of Health and Human Services (DHHS) to conduct a three-year demonstration project using contractors to identify and correct improper Medicare payments. Congress subsequently enacted legislation in 2006, which directed DHHS to make the RAC Program permanent and nationwide by January 1, 2010 even though the initial pilot project, implemented in California, New York, and Florida, had not yet been evaluated.

As indicated in Supervisor Knabe's motion, the RAC Program has been extremely problematic largely because contractors had a strong financial incentive to deny claims. They have received contingency fees even if denials are overturned on appeal. In addition, RAC employees who audit claims lack sufficient experience and expertise to judge medical necessity. It also has lacked clear performance standards and adequate oversight by the Centers for Medicare and Medicaid Services (CMS). In practice, a high percentage of audited claims have been denied with denials overturned on appeal.

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In response to problems identified with the program, last November, Representative Capps (D-CA) introduced H.R. 4105, a bipartisan bill which would impose a one-year moratorium on the RAC Program and require the U.S Government Accountability Office and CMS to evaluate the program and report their findings to Congress. H.R. 4105 is supported by major hospital associations, including the California Hospital Association and American Hospital Association, and also has 97 cosponsors of whom 22 are from California. The bill was referred to the House Energy and Commerce and Ways and Means Committees, neither of which have taken any action.

The County's Department of Health Services (DHS) is supportive of H.R. 4105 and amendments which would establish clear performance standards, improve oversight, and require medical necessity to be determined by qualified medical professionals. There are no existing Board policies relating to the RAC Program. **Therefore, a position on H.R. 4105 or similar legislation is a matter for Board policy determination.**

WTF:GK
MAL:MT:mp

c: Executive Officer, Board of Supervisors
 County Counsel
 Director of Health Services